IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6077 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPBHAI @ DIPAKBHAI DOLATRAIPATHAK

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

Mr S K Patel, AGP for Respondent No. 1

RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/09/2000

ORAL JUDGEMENT

The petitioner abovenamed has filed this petition under Articles 21, 22 and 226 of the Constitution of India challenging the detention order dated 16.5.2000 passed by the District Magistrate, Junagadh.

2. It is contended that the petitioner has submitted his representation dated 10.6.2000 addressed to different authorities enumerated therein and the said representation was tendered to the jail authorities for transmitting the same to the authorities to whom the representation was addressed. This was in accordance with the requirement of the detention order at page 22 which clearly states that the petitioner was at liberty to submit representation to the authorities indicated in the said order at page 22.

3. The petitioner has submitted the representation on 13.6.2000. A communication was received by the learned Advocate for the petitioner that the representation was submitted in Gujarati language. That however, when the representation is required to be sent to the Additional Secretary to the Union of India, New Delhi, then the same was required to be sent in English language. Since the representation was in Gujarati language, the petitioner was required to submit English translation of the said representation. Thereby, the representation in Gujarati language was not forwarded by the jail authorities to the said authority at New Delhi. This fact has not been disputed during the course of arguments.

4. It has been argued on behalf of the petitioner that the right of the petitioner to make effective representation is his statutory right and it is also his right arising out of Article 22(5) of the Constitution of India. That when the representation was not placed before the authority concerned, there was no occasion for the said authority to consider the same. Therefore, the detention of the petitioner has been continued without application of mind to the representation of the petitioner. Therefore, such detention must be treated to be illegal. On this aspect of the case, learned Advocate for the petitioner has relied upon a decision of this Court in Special Civil Application No.5460/2000 rendered on 21.7.2000 (Coram: R P Dholakia, J.). There also the circumstance was similar and the representation was submitted to the jail authorities which was in Gujarati language. There also the Jail authorities had asked the petitioner for translated version of the representation. Learned Judge of this Court in that case, considered a decision of the Supreme Court, reported in AIR 1999 SC 684 as well as a decision reported in 2000(1) GLH 393 and held that effective representation of the petitioner was a statutory right and the petitioner's right has been denied by not forwarding the said representation to the

appropriate authority.

5. In the aforesaid view of the matter, the impugned order of detention order cannot be treated to be legal and valid and further detention of the petitioner cannot be upheld.

6. In the result, this petition is required to be allowed. The impugned order of detention is quashed and set aside. The detenu is directed to be released forthwith, if not required in any other case. Rule made absolute accordingly. Direct Service is permitted.

7.9.2000 [D P Buch, J.]

msp